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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

12 Cr. 120 RJS

5 NICOLAS EPSKAMP, a/k/a
6 Sealed Defendant 2,

7 Defendant.

-----x

8
9 February 23, 2015
9:40 a.m.

10 Before:

11 HON. RICHARD J. SULLIVAN,

12 District Judge
13 and a jury

14 APPEARANCES

15 PREET BHARARA,
16 United States Attorney for the
17 Southern District of New York
18 SHANE T. STANSBURY,
19 IAN PATRICK MCGINLEY,
20 ANNA MARGARET SKOTKO,
21 Assistant United States Attorneys

22 LAW OFFICE OF LONDON & ROBIN,
23 Attorneys for defendant Epskamp
24 IRA D. LONDON, Esq.
25 AVROM JEROME ROBIN, Esq.
Of counsel

Also Present:

JOSEPH THOMPSON, Special Agent DEA
BRANDON DeSHIELDS, Paralegal U.S. Attorney's Office
JENNIFER HANSMA, Paralegal U.S. Attorney's Office
YEKATERINA FOMITCHEVA, Paralegal London & Robin

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(In open court; jury not present)

THE COURT: Let's just take appearances since this the first day of the trial.

(Case called)

THE COURT: Welcome. Please have a seat, all of you.

MR. LONDON: Your Honor, may we approach at sidebar on a CJA issue?

THE COURT: That is fine. I am pausing for a second. The paralegal you have is Mr. Thompson?

MR. STANSBURY: Mr. Thompson is the agent.

THE COURT: Mr. Thompson is the agent? Agent Carrera is who you listed.

MR. STANSBURY: Mr. Thompson is taking the place of Agent Carrera, who will be going down to Colombia with the attorneys.

THE COURT: That kind of screws up my questionnaire.

MR. STANSBURY: Sorry, your Honor.

THE COURT: Mr. Thompson's first name is?

MR. STANSBURY: Joseph.

THE COURT: Joseph? All right.

Let's do this over here.

(By Order of the Court, Sidebar Conference is Sealed)

(In open court)

THE COURT: Let's talk about any outstanding issues we need to resolve. I think one of the main issues on my mind was

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1 where we stand with Mr. de Jongh in Germany. Any developments
2 or news on that front?

3 MR. LONDON: Mr. Luebke, the German prosecutor, has
4 been totally unresponsive. We phoned him. We have e-mailed
5 him as recently as the weekend, and he has not responded in any
6 way. So we would like to just place our objection to the lack
7 of response from the German government to our request to CCTV
8 Mr. de Jongh's testimony.

9 THE COURT: All right. Well, I have no control over
10 them, obviously, but what do you propose we do at this point?

11 MR. LONDON: May I have a moment, your Honor?

12 THE COURT: Yes.

13 (Off-the-record discussion)

14 MR. LONDON: Your Honor, the only thing I can think
15 of, we have done everything we can do, and I might add the
16 government even put an inquiry out to him. The only thing I
17 can think of, if the court might reach out to him.

18 THE COURT: I am not sure how I would reach out for
19 him. You mean make a call? I think, look, generally these
20 things have to be done through proper channels. I sometimes
21 issue requests for assistance, and I guess I did one of those
22 in this case, but I don't know that I can pick up the phone and
23 give him a call. Actually, Jerry, all I am getting is code.

24 (Pause)

25 THE COURT: You were proposing that I give sort of an

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1 informal call to the German prosecutor?

2 MR. LONDON: An e-mail might do.

3 THE COURT: Does the government have any views on
4 this? You have been in touch with the prosecutor?

5 MR. STANSBURY: As you recall, this came up at the
6 last conference, and you asked that we reach out if the defense
7 requested, which they did. We immediately sent an e-mail to
8 the prosecutor, our contact over there. We have not heard from
9 defense counsel until now about --

10 MR. ROBIN: Excuse me. I am sorry. The client is
11 having trouble hearing Mr. Stansbury.

12 THE COURT: Yes. Make sure you keep your voice up and
13 try to speak into the microphones, either that one there or the
14 one at the desk.

15 MR. ROBIN: Thank you.

16 MR. STANSBURY: We did reach out. It appears that
17 there was no progress, but we frankly have not heard anything
18 from defense counsel since that day.

19 THE COURT: Which was when?

20 MR. STANSBURY: Which was at the last conference when
21 it came up.

22 THE COURT: The last conference?

23 MR. STANSBURY: We are happy to make another call
24 directly if your Honor wants, but I am not sure that we can do
25 more. As you know, we did everything we could to make the Rule

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1 15 deposition happen, and the defendant abandoned that motion.
2 I am not sure how responsive they're being given all of that.

3 THE COURT: Well, I guess if you are having informal
4 communication with the prosecutor, I suppose it doesn't hurt to
5 just make a follow-up call. If you think there is some
6 prohibition for you to do that or for the court to do that,
7 then I guess it wouldn't be appropriate.

8 Do you have a view as to whether you or the court, on
9 behalf of the Government of the United States, defined broadly,
10 can be pick up the phone and call a German prosecutor about
11 testimony in a U.S. case?

12 MR. STANSBURY: Our view has always been it should go
13 through the proper channels. This is a defense motion, it
14 should go through letters rogatory just as the Rule 15 motion
15 went through letters rogatory.

16 However, we've indicated to the defense all along if
17 there is anything we can do to help facilitate communication,
18 we are willing to do that because we happen to have a direct
19 line of communication to the German prosecutor through the
20 Office of International Affairs, and since the diplomatic
21 channels are aware of this communication, we didn't mind doing
22 that. We are happy to make another call if it is appropriate.

23 THE COURT: I certainly have no objection to anybody
24 communicating to officials with whom they're speaking that the
25 court is inquiring whether or not we're going to be having

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1 testimony from a witness who is in German custody. If that
2 much helps, Mr. London, certainly you can convey my questions
3 in that regard and the same for the government lawyers, okay?

4 I am a little reluctant to sort of pick up the phone
5 because I am not sure that that is something that judges can or
6 should be doing, but I'll think about that as well, okay?

7 MR. LONDON: Thank you.

8 THE COURT: Are there other issues we should be
9 resolving before the jury gets here?

10 MR. LONDON: There is one other issue I want to put on
11 the record. We earlier joined in co-defendant Watson's
12 objection and motion to dismiss the indictment based on
13 jurisdiction. We join in that motion. We simply wish to
14 preserve our objection to the jurisdiction issue.

15 THE COURT: All right. I think the motion, you made
16 the motion. I don't think it is compromised. You have made
17 your record.

18 MR. ROBIN: One more issue, Judge?

19 THE COURT: Yes, that is fine.

20 MR. ROBIN: This is a timing issue.

21 The government and the defense have been working very
22 closely to move this trial along really quickly. We have done,
23 to me, what seems like a really large number of stipulations.
24 Now our concern is that with the government and I going
25 Wednesday to interview the witness in a foreign, in a foreign

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1 country, that the government's case conceivably -- we don't
2 know for sure -- could conclude on Thursday. Our request is
3 that summation, defense case, if any, and summation not happen
4 until Monday when Mr. Stansbury and I are back.

5 Now, I know that, you know, that may leave a half a
6 day empty Thursday afternoon if things move along really
7 quickly, but we're asking your Honor to work that into the
8 schedule. I know you're very rigorous about not wasting the
9 jury's time, and we appreciate that. We have done everything
10 to move that along in ways we can, but we are afraid it might
11 work against us here.

12 THE COURT: Let me just be clear since the government
13 has more control over its case than you do. Hold on one
14 second.

15 (Pause)

16 THE COURT: All right.

17 MR. ROBIN: Could I just finish my --

18 THE COURT: Yes. I was going to ask them to tell me
19 when they think they're likely to rest?

20 MR. MCGINLEY: Thank your Honor. Good morning.

21 I believe the way we think it will play out now is the
22 testimony in the foreign country will be on Wednesday.
23 Possibly it bleeds over into Thursday morning, but probably
24 not. Then there may be some 404 (b) testimony that day.

25 THE COURT: From witnesses?

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1 MR. MCGINLEY: From witnesses here in the United
2 States.

3 THE COURT: Right.

4 MR. MCGINLEY: And then we could be in a position then
5 when the government rests.

6 THE COURT: What is the earliest you think you'd be
7 resting?

8 MR. MCGINLEY: The earliest we would rest would be
9 probably mid-morning or around noon on Thursday.

10 THE COURT: All right. What the defense is asking is
11 that I then send the jury home and tell them not to come back
12 until Monday.

13 MR. MCGINLEY: We join in that request. It is
14 essentially we don't close while Mr. Robin and I are in the
15 air. That would be a joint request. I am, for whatever it is
16 worth, I am scheduled to give the closing argument. I know we
17 are all fungible, government attorneys, but it would be our
18 preference, if it pleases the court.

19 THE COURT: Normally I think you are fungible, but I
20 don't think Stansbury is up to it. We can do that, all right?

21 MR. ROBIN: Thank you, Judge.

22 THE COURT: Okay. That was a "yes"?

23 MR. ROBIN: Yes.

24 THE COURT: I noticed Agent Carrera is here. Will he
25 be introduced to the jury as well? He is on the list.

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1 MR. STANSBURY: I don't see any reason to introduce
2 him to the jury.

3 THE COURT: He will be testifying or not?

4 MR. STANSBURY: At this point, it is doubtful.

5 THE COURT: If he is here when the jury is getting
6 picked and somebody recognizes him and asks? I will ask
7 whether you recognize anybody else in the courtroom, so that
8 probably would trigger a raised hand if anybody does recognize
9 him.

10 The way I have it before, he was listed as the person
11 at counsel table, and Agent Thompson was listed as a witness or
12 a person whose name might be mentioned during trial. Is
13 Mr. Thompson going to be testifying?

14 MR. STANSBURY: He is.

15 THE COURT: But Mr. Carrera is not going to be
16 testifying?

17 MR. STANSBURY: It is doubtful. There is a slight
18 possibility he will. In an abundance of caution, it might not
19 be a bad idea to mention his name, but he is in the courtroom.

20 THE COURT: I think I will do that.

21 When the jury comes in, what I'll ask for anybody who
22 is in the courtroom who is not with the jury panel, with the
23 venire, move to the far right side of the back of the jury
24 room. I am not sure if there will be a lot of people at that
25 point, but Agent Carrera, if you would do that. Otherwise, we

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1 would get you another chair up here and you could sit up at the
2 front table if you want.

3 All right. So other issues? I heard there was
4 something with respect to openings you had questions on?

5 MR. STANSBURY: Your Honor, just a technical matter.
6 We plan to use two exhibits during the opening. We know the
7 jury has screens, but we were hoping for a larger screen and we
8 were wondering if we could move this piece of equipment over
9 towards the jury?

10 THE COURT: I don't know if it is that easy to move.
11 Normally you folks are responsible for your own screens. I
12 don't know how much rope there is for that screen to move. It
13 is generally there for the gallery, which I am not sure how
14 many people will be in the gallery. That is what it is usually
15 there for.

16 MR. STANSBURY: There appears to be a connection over
17 here. If we can talk to the technical folks during a break?

18 THE COURT: All right. I don't mind you using a
19 screen, but I think the problem with the screen, if you're
20 going to push it way up here, it can block the view of the jury
21 and the parties.

22 MR. STANSBURY: We were going to move it right there.

23 THE COURT: That might work. You will use two
24 exhibits? What are the exhibits?

25 MR. STANSBURY: I can hand them up to your Honor.

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1 THE COURT: Defense counsel has seen the exhibits?

2 MR. STANSBURY: They have.

3 MR. ROBIN: Yes, sir.

4 THE COURT: No objection to them using them?

5 MR. ROBIN: No objection.

6 THE COURT: Okay. You can hand that back. I think we
7 can probably work with those logistics. I don't think we will
8 be opening before lunch. I am virtually certain of that.
9 Whatever logistical and technical maneuvers you need to make
10 for openings, why don't you plan on doing that between roughly
11 1:00 and 2:00.

12 MR. STANSBURY: There is one other logistical issue.
13 I haven't been in this courtroom for trial. Are you planning
14 on doing the examination from that podium over there or will
15 that be moved over here?

16 THE COURT: No. We'll use the lectern there with the
17 microphone there. The lectern, I generally have you move that
18 back to where you're about even with the last juror, and the
19 microphone will move back with you so that will be what you
20 use.

21 MR. STANSBURY: Is it possible for examination
22 purposes to use that lectern with the screen so we can view the
23 exhibits?

24 THE COURT: The problem is you can't really see the
25 witness if you're using that lectern. I know some courtrooms

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1 have the equivalent of that lectern over here. That, of
2 course, blocks the access of the jury. The courtroom is a 1935
3 courtroom, and so it wasn't built with the technical issues
4 that we sometimes encounter here, but I think it works best to
5 use that. Sometimes you can set up a laptop or use that screen
6 in a way that allows you to access it from where you are.

7 MR. STANSBURY: Okay.

8 THE COURT: Plan on doing that, okay?

9 MR. STANSBURY: Okay.

10 THE COURT: If there is an Elmo in the large lectern,
11 if you need to use that, the best thing to do is walk over or
12 have one of your colleagues or the paralegal manning the Elmo.

13 MR. STANSBURY: Okay.

14 THE COURT: All right. Anything else from the
15 defense?

16 MR. ROBIN: No, your Honor.

17 THE COURT: We'll call to see where we are with the
18 jury, but I expect it will probably be 20 minutes or so. In
19 the meantime, you can stretch your legs, get a drink of water.
20 Once the jury is on its way, we'll let you know. I will step
21 off, but I'll just be in the robing room.

22 (Jury selection was reported but not ordered to be
23 transcribed)

24 (Court adjourned until Tuesday, February 24, 2015)